

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JIMMY ELDON SIMS,)	
)	
Petitioner,)	
)	
-vs-)	Case No. CIV-13-368-F
)	
TRACY MCCOLLUM, Warden,)	
)	
)	
Respondent.)	

ORDER

On May 12, 2016, United States Magistrate Judge Bernard M. Jones issued a Report and Recommendation, recommending that petitioner, Jimmy Eldon Sims's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. Magistrate Judge Jones advised the parties of their right to object to the Report and Recommendation by June 2, 2016 and he specifically advised them that failure to make a timely objection waives the right to appellate review of the factual and legal issues addressed.

No party has filed an objection to the Report and Recommendation or sought an extension of time to file one. With no objection being filed within the time prescribed, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

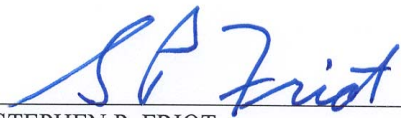
Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires the court to issue or deny a certificate of appealability when it enters a final order adverse to the petitioner. Section 2253(c)(2) of Title 28 of the United States Code instructs the court to issue a certificate of appealability "only if the

[petitioner] has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the court rejects a constitutional claim on the merits, the “substantial showing of the denial of a constitutional right” requires the petitioner to demonstrate that reasonable jurists would find the court’s assessment of his claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000). Where the court denies habeas relief on procedural grounds, the petitioner must show that jurists of reason would find it debatable (1) whether the court was correct in its procedural ruling; and (2) that the petition states a valid claim for the denial of a constitutional right.

Upon review, the court concludes petitioner cannot satisfy the standards for issuance of a certificate of appealability. A certificate of appealability is therefore denied.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Bernard M. Jones on May 12, 2016 (doc. no. 34) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. The Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by petitioner, Jimmy Eldon Sims, on April 15, 2013, is **DENIED**. A certificate of appealability is **DENIED**. Judgment shall issue forthwith.

DATED June 16, 2016.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE